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Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Review of the Commission's Regulations	)	
Governing Television Broadcasting	)	MM Docket No. 91-221
	)	
Television Satellite Stations	)	
Review of Policy and Rules	)	MM Docket No. 87-7

REPLY COMMENTS OF

Black Citizens for a Fair Media
Center for Media Education
Chinese for Affirmative Action
Communications Task Force
League of United Latin American Citizens
Minority Media Telecommunications Council
National Association for Better Broadcasting
NOW Legal Defense and Education Fund
Office of Communication of United Church of Christ
Philadelphia Lesbian and Gay Task Force
Telecommunications Research and Action Center
Washington Area Citizens Coalition Interested in Viewers' Constitutional Rights
Wider Opportunities for Women
Women's Institute for Freedom of the Press

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SUMMARY

The Commission should retain a strong radio/television cross-ownership rule and a strict waiver policy to preserve diversity of ownership and viewpoint. Thus, the Commission should reject broadcasters' arguments that market changes justify the repeal or substantial liberalization of the rule. Preserving diversity of ownership results in more varied local programming, ensures integrity in news coverage and increases leadership opportunities for women and minorities.

Broadcasters argue that the market presence of newspapers, cable, MMDS, OVS, DBS and the Internet erodes their ability to compete. However, these information services are not substitutes for traditional broadcasting because they are not accessible by a substantial segment of the public, and for the most part do not provide any new sources of local programming. In addition, the presence of these information services is undermined by the countervailing effect of the substantial consolidation in the industry. While broadcasters claim that economic efficiencies and subsequent benefits resulting from these mergers justify the repeal of the radio/television cross-ownership rule, these presumed benefits do not enhance ownership and viewpoint diversity.

In addition, broadcasters' claim that Congress supports the repeal of the radio/television cross-ownership rule is also erroneous. In fact, Congress only suggested a minimal expansion of the presumptive waiver policy. Finally, broadcasters argue that the Commission should substitute the cross-ownership rule with a minimum-voice test and discard the five-factor test. However, replacing the cross-ownership rule with a minimum-voice test would endanger diversity by allowing broadcasters to avoid scrutiny. The Commission should retain its presumptive waiver policy requiring a minimum of 30 independent voices and extending only to the top 50 markets, as well as a more strictly-applied five-factor waiver test.

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Black Citizens for a Fair Media, Center for Media Education, Chinese for Affirmative Action, Communications Task Force, League of United Latin American Citizens, Minority Media Telecommunications Council, National Association for Better Broadcasting, NOW Legal Defense and Education Fund, Office of Communication of United Church of Christ, Philadelphia Lesbian and Gay Task Force, Telecommunications Research and Action Center, Washington Area Citizens Coalition Interested in Viewers' Constitutional Rights, Wider Opportunities for Women, and Women's Institute for Freedom of the Press (Commenters) hereby submit the following Reply Comments in response to the Commission's Second Further Notice of Proposed Rulemaking, FCC 96-438, released November 7, 1996.

In their original filing, Commenters argued that the Commission should neither repeal the radio/television cross-ownership rule nor liberalize the cross-ownership waiver policy because both actions would reduce the number of independent media voices and diverse viewpoints, reduce the public's options for viewing local news, public affairs, and issue-responsive programming and increase market-entry barriers for women and minorities. Commenters also advocated that the Commission tighten its scrutiny of waiver requests under the five-factor case-by-case analysis by requiring applicants to provide specific evidence of how common ownership would improve diversity.

In this current filing, Commenters will respond to the comments submitted by broadcasters who seek the repeal, or alternatively the substantial relaxation of the radio/television cross-ownership rule and waiver policy. Commenters believe that broadcasters erroneously focused on diversity of programming rather than on diversity of ownership and viewpoint. Throughout their comments, broadcasters describe their ability to provide niche programming, suggesting that providing programming that targets small special-interest groups effectively dispenses with their diversity obligations. These arguments fail to mention that the corporate heads of broadcast conglomerates have the final word on any decision that affects product-output, regardless of the audience their programming serves. Commenters also believe that prevailing market circumstances make the radio/television cross-ownership rule and a tightened and strictly-applied waiver policy essential to the protection of diversity and competition.

I. DIVERSITY OF OWNERSHIP LEADS TO DIVERSITY OF PROGRAMMING, MORE COMPREHENSIVE COVERAGE OF NEWS AND INCREASED OPPORTUNITIES FOR WOMEN AND MINORITIES.

Contrary to the comments of the National Association of Broadcasters, diverse ownership is the best way to ensure diversity of programming.[1] Diversity of ownership allows for a multitude of perspectives. Common ownership, on the other hand, reduces the number of perspectives through the use of syndicated programming and shared editorial staff.[2] As one reporter recently noted, "As

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[1]National Association of Broadcasters, Comments at i-ii.

[2]"The wave of radio mergers is increasing the demand for more syndicated programming among local stations, as owners of multiple outlets in a single market seek to differentiate their formats while cutting programming staffs." Steve Knoll, Radio Station Consolidation: Good News for Owners, but What About Listeners, The N.Y. Times, Dec. 30, 1996, at D5. See also, Bill Keveney, Local Radio News? Those Were the Days, The Hartford Courant, Jan. 26, 1997, at A1. "The ease and relatively low cost of syndicated programming makes it particularly attractive

ever-fewer companies own ever-more stations in each city, the number of news-gathering operations will decrease further . . . ending up with one station providing news for all its parent firm's local stations."[3] For example, presently, Jacor Communications uses the same news director to serve at least four of the eight radio stations that it owns in Denver.[4] Soon, Jacor will acquire a radio syndication company that will allow it to feed the same programming to its stations, especially the 20 AM talk stations that Jacor owns in major markets.[5]

In addition, there are several reasons why diversity of ownership is an important goal independent of diversity of programming. Diversity of ownership significantly decreases the opportunity for a small number of broadcasters to set the agenda for news coverage and to stifle programming that may be contrary to the interests of their corporate parents. As one article recently observed, the independence of journalists is threatened by corporate mergers, noting, "[m]ore and more news organizations are bought by companies whose primary business has never been anything remotely resembling journalism -- many of them companies with profit interests in such global businesses as aviation, nuclear power, financial services, sports teams, hazardous waste disposal and

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to growing conglomerates shelling out hefty sums to buy new stations....When it starts happening extensively, what you lose is local news and local talk content." (internal quotations omitted)

[3]Marc Fisher, No News Is...Much Cheaper; Most Stations Offer Nothing but a Few Old Headlines, The Wash. Post, Feb. 11, 1997, at C7. "The sad truth about consolidation is that it cuts back on available perspectives on the news." Id.

[4] Steve Knoll, Radio Consolidation Makes Waves in News, Ads; January 2, 1997, at 4B. In other cities such as Little Rock, Ark., for example, newscasters have found that shared consolidation made news "'a bit more cookie-cutter and corporate." Steve Knoll, Radio Station Consolidation: Good News for Owners, but What About Listeners?, The N.Y. Times, Dec. 30, 1996, at D5.

[5]Geraldine Fabrikant, Jacor Buys EFM Media, Limbaugh's Distributor, The N.Y. Times, Mar. 19, 1997, at D6.

other favorite targets of nosy journalists."[6] In one local example of a corporate agenda influencing news coverage, executives from WJLA and its parent company Allbritton pressured the station to air 20 hyped-up stories about the closing of Pennsylvania Avenue. The closing had cost another Allbritton holding, Riggs Bank, several million dollars. According to WJLA reporters, "[i]t felt like advocacy journalism predicated on who our employer was, Riggs Bank....We were told to cover the story, who to interview, the best angles to take."[7] In another example, WNBC television gave cursory coverage to stories on Valujet, an admiral's suicide and Bob Dole's campaign in order to air a promotional and "time-eating non-story" on George Steinbrenner's appearance on Seinfeld, which happens to be one of the most valuable properties of WNBC's parent company.[8] These examples demonstrate the importance of diverse ownership. The more media entities that are present in the broadcast industry, the greater the likelihood that broadcasters will cover controversial issues and critique each others' editorial and programming choices.

Diversity of ownership also creates more opportunities for women and minorities to own media and to assume significant leadership roles, from which they are now conspicuously absent. The percentage of women and minorities employed in the broadcast industry is significantly less than the

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[6]Andie Tucher, The Real Dangers of Conglomerate Control; A Columbia Journalism Review Forum Looks at the Bad News About Corporate Synergy, Colum. Journalism Rev., Mar.-Apr. 1997, at 46.

[7]Howard Kurtz, WJLA Pounds the Pavement for its Owners; Corporate Tie Drove Penn. Ave Stories, The Wash. Post, July 10, 1996, at F1.

[8]Rich, Media Amok, The N.Y. Times, May 18, 1996, at 19. "WNBC is hardly anomalous; such synergistic merchandising in the guise of journalism is a nightly feature of local news nationwide...." Id.

percentage of women and minorities in the national workforce.[9] As Spectrum Detroit notes in its Comments, few women and minorities hold decision-making positions.[10] Moreover, as mentioned in our previous comments, the current consolidation in the industry is already squeezing-out female and minority entrepreneurs.[11] Elimination of the cross-ownership rule would exacerbate this detrimental impact on female and minority owners.

II. BROADCASTERS' ARGUMENTS DO NOT JUSTIFY THE REPEAL OR SUBSTANTIAL LIBERALIZATION OF THE RADIO/TELEVISION CROSS-OWNERSHIP RULE, NOR DO THEY JUSTIFY THE RELAXATION OF THE RADIO/TELEVISION CROSS-OWNERSHIP WAIVER POLICY.

The broadcasters' overarching argument in their comments is that the existence of new technologies in the market justifies a repeal of the rule. However in supporting this argument, broadcasters rely on inaccurate claims about the state of the industry. Moreover, they ignore legislative history expressing concern about the preservation of diversity.

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[9]In 1994, the national labor force was 45.9% women and 24.3% minorities. However, in that same year, the broadcast industry was composed of 39.9% women and 18.4% minorities. 1994 Broadcast and Cable Employment Report, FCC Public Notice, June 2, 1995 (citing statistics from the U.S. Department of Commerce, Bureau of the Census, Labor Force Data from the 1990 Census).

[10]In 1994, broadcast officials and managers were composed of 34.9% women and 12.9% minorities. Id. In 1995, minorities owned only 2.9% and 3.0% of commercial radio and television stations, respectively. Minority Commercial Broadcast Ownership, Apr. 1996, U.S. Dept. Of Commerce, NTIA Study. None of the top 25 radio or television owners are minorities or women. Spectrum Detroit, Inc., Comments at 25 ¶ 45.

[11]Black Citizens for a Fair Media, Comments at 8.

A. The tremendous and unprecedented trend of consolidation in the broadcast industry undermines the positive benefit that the entrance of new technologies will have on diversity and competition.

Broadcasters claim that the availability of cable TV, MMDS and newspapers, plus the entrance of new technologies, such as the Internet, OVS, DBS, make the market sufficiently robust so that the radio/television cross-ownership rule is unnecessary.[12] This assertion ignores the tremendous consolidation in the broadcast industry. The number and size of the buyouts and alliances that have taken place in the broadcast industry since the Telecommunications Act of 1996 are unprecedented.[13] In 1996, the dealmakers in radio and television alone spent $25.4 billion on consolidations.[14] That figure is 204% more than the $8.32 billion spent on radio and television consolidations in 1995, which was marked by numerous deals in anticipation of the Act.[15] Just

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[12]CBS, Comments at 3-6; Jacor Communications, Inc., Comments at 3; Paxson Communications Corporation, Comments at 21.

[13]Among the recent merger activity: Evergreen joined Chancellor Board to become the second largest radio chain with 103 stations in 21 communities. Infinity Broadcasting Corp. joined Westinghouse Electric Corp./CBS Radio Inc to own 77 stations and dominate the top ten markets. News Corp./Fox Television Stations Inc. completed its acquisition of New World Communications and became the nation's top TV station owner. Tribune Company joined Renaissance Communications to own 16 stations and reach 1/3 of the nation's households. Clear Channel Communications acquired over 100 radio stations for a total of 121 nationwide. A.H. Belo Corp. acquired 16 television stations. Chancellor Broadcasting Co. owns 53 stations in 15 markets. Neal Hickey, So Big, The Telecommunications Act at Year One, Colum. Journalism Rev., Jan.-Feb. 1997, at 23. Neal Templin, Evergreen Media to Buy Radio Chain, Wall St. J., Feb. 19, 1997, at A3; Paul Farhi, Radio Deal to Pool 11 Area Stations, The Wash. Post, Feb. 19, 1997, at D10; Donna Petrozzello, Trading Market Explodes, Broadcasting & Cable, Feb. 3, 1997, at 18.

[14]Donna Petrozzello, Trading Market Explodes, Broadcasting and Cable, Feb. 3, 1997, at 18. Radio deals totaled $14.87 billion and television deals totaled $10.49 billion.

[15]Id.

recently, in a $1.5 billion deal, one broadcaster acquired control over 267 stations and $870 million in revenue through three of his radio companies.[16]

As a result of this buying frenzy, the local media in many cities across the country are dominated by a few entities. After acquiring nine stations in 1996, as part of its $150 million spending spree in San Diego, Jacor controls more radio stations than any other company serving the San Diego market. At least five other San Diego stations are owned by Nationwide, the city's second-largest radio station owner.[17] Of the 103 radio stations it has acquired, Chancellor Media Corp. owns five FM stations in Los Angeles, five in Denver, and together with two other mega-media companies, owns 17 Orlando stations.[18] In Hartford, American Radio systems and SFX Broadcasting own or are acquiring nine mostly top-rated radio stations. SFX decided to remove news and talk from one of those stations, leaving only one station with substantial news coverage.[19] These types of consolidations will reverberate through the industry and will continue to dramatically reduce broadcast diversity. Thus, broadcasters cannot cite the expansion of other media while ignoring the extensive consolidation in broadcasting, and reasonably argue that the market has expanded sufficiently.

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[16] Elizabeth A. Rathbun, Hicks's Sticks Hit 267, Broadcasting & Cable, Feb. 24, 1997, at 6.

[17] John Freeman, Jacor on Spree, Buys 4 More Stations Here, The San Diego Union-Tribune, Oct. 22, 1996, at C1.

[18] Sallie Hofmeister, Company Town $2.7; Billion Deal Would Create No. 2 Radio Group in U.S., L.A. Times, Feb. 19, 1997, at D1; Joanne Ostrow, Radio Daze; Mega-merger Could Put KPRF in Game, The Denver Post, Feb. 19, 1997, at F1; Catherine Hinman, Stations Grapple with Life After Deal, The Orlando Sentinel, Jan. 6, 1997, at 43.

[19] Bill Keveney, Local Radio News? Those were the days, The Hartford Courant, Jan. 26, 1997, at A1.

Moreover, contrary to broadcasters' assertions, emerging technologies do not increase diversity of viewpoints to such an extent as to justify the repeal of the radio/television cross-ownership rule.[20] For the most part, these new technologies do not provide original or local programming, but rather transmit existing programming. Moreover, these information services have not yet been able to overcome all of the political and technological hurdles hampering the transmission of local programming. For example, DBS providers have found that the transmission of local programming is "prohibitively expensive" because of copyright fees.[21] Even if DBS providers secure the right from Congress to avoid copyright costs, at best, these services would transmit existing views and would not add new perspectives to the market.[22]

In addition, the programming transmitted via the new technologies is often under the control of the same companies that dominate radio and television today. While some broadcasters tout the benefits of the Internet, DBS, and OVS as a restraint on the dangers of cross-ownership, they are simultaneously acquiring large stakes in on-line companies and satellite operations. For example, CBS and Walt Disney Company are planning to acquire significant stakes in the top two on-line sports services, Sportsline USA and ESPNet Sportszone, respectively.[23] Television conglomerates seeking on-line partners aim to encourage their television audience to patronize those on-line

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[20]CBS, Comments at 3-4.

[21]Mark Landler, Deal by Murdoch for Satellite TV Startles Industry, The N.Y. Times, Feb. 26, 1997, at A1.

[22]Id.

[23]Steve Lohr, CBS to Buy One-Third Stake in Sportsline, The N.Y. Times, Mar. 4, 1997, at B 11.

services.[24] In the DBS industry, Rupert Murdoch's vast empire, which includes television, cable, newspapers, magazines, online, publishing, and film services, is ready to solidify a foothold in satellite by investing $1 billion to gain a dominant position.[25] Murdoch's News Corporation would have the power to favor the transmission of its networks over the transmission of other programming options. Thus, even if the new technologies provide some original local programming, they do not alter the lack of ownership diversity in traditional broadcasting.

In addition, broadcast services are the only ones that are available to essentially all Americans for free. Broadcasters claim that the radio/television cross-ownership rule is a handicap in a fierce competitive environment created by the entrance of emerging technologies. But in truth, the majority of the public continues to rely on broadcast media, especially television, in a way that it does not rely on other information providers.[26] Indeed, because television has a more significant impact than radio in providing news and other programming, it would be particularly harmful to viewpoint diversity if radio station conglomerates could combine a television station with the maximum number of radio stations allowed under the 1996 Act. Consequently, contrary to broadcasters claims,[27] the

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[24]Id.

[25]Mark Landler, Deal By Murdoch for Satellite TV Startles Industry, The N.Y. Times, Feb. 26, 1997, A1.

[26]Fifty-nine percent of the nation relies on broadcast television as their primary news source. Only 23% of the nation relies on newspapers for their news. Only 4 million subscribe to DBS, only one million subscribe to MMDS and less than 2,200 subscribe to OVS. Annual Assessment of the Status of Competition the Market for the Delivery of Video Programing, CS Docket No. 96-133, Jan. 2, 1997, at 131.

[27]National Association of Broadcasters, Comments at 13, 15; Paxson Communications Corporation, Comments at 19.

Commission would not be unfairly penalizing television owners by retaining the radio/television cross-ownership rule.

Finally, broadcasters erroneously claim that the results of a CBS-sponsored study prepared by Economists Incorporated justifies the repeal of the radio/television cross-ownership rule.[28] The CBS study presents an antitrust analysis, and ignores the critical issues of viewpoint and ownership diversity. In addition, the economists fail to explain their methodology, making it more difficult to evaluate how they calculated such a high number of voices per market.

B. Economic efficiencies and broadcasters' self-interest do not justify the repeal of the radio/television cross-ownership rule.

Broadcasters claim that as a result of common ownership they will have the economic self-interest and the combined resources to present a wide variety of niche programming, improve the quality of presentation, share equipment and personnel, and host "community programs."[29] Broadcasters erroneously suggest that these benefits justify the repeal the radio/television cross-ownership rule.[30]

Although financial incentives may prompt broadcast conglomerates to seek out new niches for programming, even those attempts will be limited to the niches that will provide the most return. Moreover, as mentioned earlier, providing niche programming, sharing equipment and personnel, and

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[28]ABC, Comments at 9; CBS, Comments at 14.

[29]ABC, Comments at 9; CBS, Comments at 22; National Association of Broadcasters, Comments at 16.

[30]CBS, Comments 7-8; Jacor Communications, Inc., Comments at 5-7; Jet Broadcasting Co., Inc., Comments at 6.

presenting common programs do not improve ownership diversity.[31] These measures cannot ensure vigorous debate and viewpoint diversity, nor can they address the conflict-of-interest concerns raised by broadcast conglomerates.[32]

C. Congress did not intend for the Commission to repeal or relax substantially the cross-ownership rule and waiver policy.

Contrary to broadcasters' assertions, Congress did not intend for the Commission to repeal or relax substantially the cross-ownership rule.[33] As Spectrum Detroit notes, Congress specifically evaluated the radio/television cross-ownership rule and made only a single change, expanding the waiver policy from the Top 25 markets to the Top 50 markets.[34] The Commission should not substantially alter the rule and waiver policy so soon after Congress set such a specific standard.[35] Nor should the Commission repeal the rule and waiver policy in view of the significant changes

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[31]Post-Newsweek Stations, Inc., Comments at 2-3.

[32]AWRT (American Women in Radio and Television, Inc.) suggests in its comments that broadcasters using savings for incubator programs should be considered favorably in the wavier process. Although Commenters agree with this view, broadcasters have not expressed interest in this area.

[33]CBS, Comments at 3-4.

[34]Spectrum Detroit, Inc., Comments at 8 ¶ 17. Congress also specifically directed the Commission to consider diversity. See H.R. Conf. Rep. 104-458, at 163 (1996).

[35]In addition, the current administration is also opposed to substantial relaxation of broadcast ownership rules. Both President Clinton and Vice-President Gore, while pleased with the 1996 Act, have publicly opposed unfettered consolidation in the broadcast industry. "'The administration's opposition to undue relaxation of media concentration has been justified by the rapid achievement in most markets of the maximum radio and TV concentration allowed under the act,' said Vice-President Gore. 'It certainly vindicates the President's insistence that we maintain limits. If the President had not held firm, you can just imagine what kind of consolidation would have taken place.'" Heather Fleming, Gore Praises Clinton for 'Holding Firm' on Consolidation, Broadcasting & Cable, Feb. 10, 1997, at 7; See also Chris McConnell, Consolidation Yea or Nay, Broadcasting & Cable, Jan. 27, 1997, at 5.

Congress made to other broadcast ownership rules. Aside from the recent consolidation trend, the effect of those rule changes is unclear, and the Commission should proceed cautiously.[36] Furthermore, it is disingenuous for broadcasters to claim that other ownership rules will protect diversity and competition, while simultaneously asking the Commission to expand those rules even further.[37] In the wake of such significant changes and the ensuing flux in the industry, the Commission should not further expand local ownership rules, and then trust those rules to protect already jeopardized diversity and competition.

III. A TIGHTENED AND STRICTLY-APPLIED WAIVER POLICY IS ESSENTIAL TO THE PROTECTION OF DIVERSITY AND COMPETITION.

Broadcasters claim that the minimum-voice test in the Commission's presumptive waiver policy is sufficient to protect diversity and that the Commission should codify the test as the rule.[38] However, such a rule would ignore what the current cross-ownership rule recognizes -- that cross-ownerships inherently threaten diversity of viewpoint and should not occur absent strong assurances that sufficient diversity remains. The Commission has long relied on a presumptive waiver policy, recognizing that the presence of numerous voices can alleviate the negative impact that cross-ownerships have on diversity and competition. Inherent in this policy is the opportunity for members

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[36] "Still, more industry consolidation appears likely. With the rise of giant radio groups, there remains considerable economic pressure on smaller companies and independent stations to merge or be acquired to remain competitive." Steve Knoll, Radio Station Consolidation: Good News for Owners, but What About Listeners?, The N.Y. Times, Dec. 30, 1996, at D5.

[37] CBS , Comments at 31; Jet Broadcasting Co., Inc, Comments at 2-6, 8; Paxson Communications Corporation, Comments at 19, 21.

[38] ABC, Comments at 9-10; CBS, Comments at 30-31; Jacor Communications, Inc., Comments at 8; Pappas Stations Partnership, Comments at 15; Shockley Communications Corporation, Comments at 6; Sinclair Broadcast Group, Inc., Comments at 12.

of the public to rebut that presumption. Codifying the presumptive waiver policy as a rule would allow broadcasters to avoid such scrutiny.

Addressing the scope of the radio/television cross-ownership presumptive waiver policy, broadcasters claim that a 20- or even 15- voice minimum test would be sufficient to protect diversity and competition, especially in view of the "undercounting" of voices in the industry.[39] As mentioned in our previous comments, because the dust has not settled following the upheaval in the communications industry, now is not the time for the Commission to reduce the minimum voice test to 20, and certainly not to 15, which will lead to even greater consolidation.[40] While two broadcasters cite WSB, Inc. v. FCC, 85 F.3d 695 (D.C. Cir. 1996) as though it indicates judicial disapproval of the 30-voice minimum,[41] the Court in WSB actually held that the Commission has the discretion to deny waiver applications. The Court's only reference to the merits of the 30-voice minimum is dicta.

Similarly, the broadcasters' suggestion that the 30 voice test undercounts the voices in the market is also invalid. As noted earlier, television has such a broad reach as compared to cable, newspapers, MMDS and emerging technologies, that the growth of these services cannot compensate for the negative impact of broadcast cross-ownerships on diversity. Because the cross-ownership rule ensures ownership diversity in broadcasting, the number of independent media voices in cable, MMDS, newspapers or emerging technologies is irrelevant.

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[39]CBS, Comments at 26-28; Jacor Communications, Inc., Comments at 8; Pappas Stations Partnership, Comments at 17-18; Paxson Communications Corporation, Comments at 23.

[40]See also Barnstable Broadcasting, Inc., Comments at 12.

[41]Pappas Stations Partnership, Comments at 17; Paxson Communications Corporation, Comments at 23.

Broadcasters also claim that market size should not be a factor in applying the minimum voice waiver test.[42] However, Congress did not view market size as irrelevant. Congress specifically established the Top 50 markets as the limit for the waiver policy.[43] The Commission should accord Congress deference on this issue.

Responding to the Commission's questions concerning the five-factor waiver test, some broadcasters argue that the test is useless, arbitrary and capricious. Commenters believe that the problem lies not with the test, but with its application.[44] The five-factor test could be a meaningful tool for evaluating the effects that potential mergers have on diversity, if it were applied strictly and consistently. It provides an opportunity to have on record the promises of waiver applicants, so that those promises can be compared to actual post-merger activity. Eliminating the five-factor test would leave the waiver process without concrete standards. Thus, the Commission should strengthen rather than discard the five-factor test.

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[42]ABC, Comments at 11; CBS, Comments at 28-29; Paxson Communications Corporation, Comments at 23-26.

[43]Telecommunications Act of 1996 § 2020(d).

[44]Thus far, the Commission has not applied the five-factor test strictly. Between July 1989 and July 1996, the Commission granted waivers to all but two applicants. Spectrum Detroit, Inc., Comments at 12-15.

IV. CONCLUSION

The Commission should not acquiesce to broadcasters whose primary concern is the creation of larger and more powerful conglomerates as a means to dominating the media industry. Diversity of ownership is especially crucial to the protection of local viewpoint and programming diversity in view of the sizable consolidations that have and continue to occur in the broadcast industry. The Commission should retain its commitment to diversity of ownership in order to preserve diversity of viewpoints and the integrity of programming, as well as the ability of female and minority entrepreneurs to assume leadership roles in the broadcast industry.

Respectfully submitted,

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